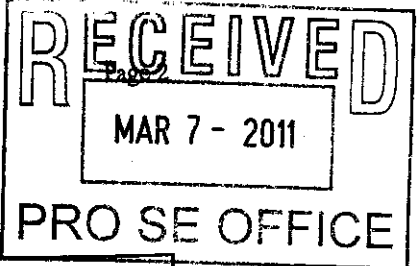


ORIGINAL

PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF  
HABEAS CORPUS BY A PERSON IN STATE CUSTODY



United States District Court		District
Name (under which you were convicted): <u>Sheldon Thomas</u>		Doc. No.: <b>CV 11-1119</b>
Place of Confinement: <u>South Port. CORR. FAC.</u> <u>P.O. box 2000, Pine City NY 14871-2000</u>	Prisoner No.: <u>07A1536</u>	
Petitioner (include the name under which you were convicted) <u>Sheldon Thomas</u>	Respondent (authorized person having custody of petitioner) <u>v. State of New York</u> <u>Brian Fischer, D.O.C.S.</u>	
The Attorney General of the State of <u>NEW YORK.</u>		

TOWNES, J.

PETITION

- (a) Name and location of court that entered the judgment of conviction you are challenging: Kings  
County Supreme Court, 320 Jay Street,  
BROOKLYN N.Y. 11201  
(b) Criminal docket or case number (if you know): 09251-04 Ind NO.
- (a) Date of the judgment of conviction (if you know): January 30th, 2007  
(b) Date of sentencing: January 30th 2007
- Length of sentence: 25 Years to Life
- In this case, were you convicted on more than one count or of more than one crime? Yes ☒ No ☐
- Identify all crimes of which you were convicted and sentenced in this case: one count murder<sup>2</sup>  
Five counts Att. Murder<sup>2</sup> Five counts Att. Assault<sup>2</sup>  
Two counts Criminal Possession of a weapon<sup>2</sup>
- (a) What was your plea? (Check one)  
(1) Not guilty ☒ (3) Nolo contendere (no contest) ☐  
(2) Guilty ☐ (4) Insanity plea ☐  
(b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge,  
what did you plead guilty to and what did you plead not guilty to? Not guilty - All counts

(c) If you went to trial, what kind of trial did you have? (Check one)

Jury ☒ Judge only ☐

7. Did you testify at either a pretrial hearing, trial or a post-trial hearing?

Yes ☐ No ☒

8. Did you appeal from the judgment of conviction?

Yes ☒ No ☐

9. If you did appeal, answer the following:

(a) Name of court: Appellate division 2nd department.

(b) Docket or case number (if you know): 2007-02273 (APP-div.docket No)

(c) Result: Judgment of conviction Affirmed.

(d) Date of result (if you know): September 15 2009

(e) Citation to the case (if you know): People vs Thomas Sheldon - 65 Ad 3d 1170-885 nys 2d 344

(f) Grounds raised: (1): The People Failed to Establish Probable Cause for Petitioner's Warrantless Arrest. (2): Trial Court erred, when over timely objection, it allowed the People to introduce Petitioner's Rikers Island Visitor Log, AS Such evidence was irrelevant, of No Probative Value And unduly Prejudicial.

(g) Did you seek further review by a higher state court? Yes ☒ No ☐

If yes, answer the following:

(1) Name of court: N.Y. State Court of Appeals.

(2) Docket or case number (if you know): 65 Ad. 3d 1170/885 nys 2d 344

(3) Result: "There is no Question of Law Presented for Review And Leave to Appeal is hereby denied".

(4) Date of result (if you know): January 6, 2010

(5) Citation to the case (if you know): 65 Ad 3d 1170/885 nys 2d 344

(6) Grounds raised: SAME AS DIRECT APPEAL.

(h) Did you file a petition for certiorari in the United States Supreme Court?

Yes ☐ No ☒

If yes, answer the following:

(1) Docket or case number (if you know): \_\_\_\_\_

(2) Result: \_\_\_\_\_

(3) Date of result (if you know): \_\_\_\_\_

(4) Citation to the case (if you know): \_\_\_\_\_

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court?

Yes ☒ No ☐

11. If your answer to Question 10 was "Yes," give the following information:

- (a) (1) Name of court: Appellate division and department  
 (2) Docket or case number (if you know): 2007-02273  
 (3) Date of filing (if you know): September 23 2010  
 (4) Nature of the proceeding: Writ of Error Coram Nobis Motion  
 (5) Grounds raised: Ineffective Assistance of Appellate Counsel for failure to Argue that the Identification Procedures used by the N.Y.P.D. was unduly Suggestive

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

Yes ☐ No ☒

(7) Result: Motion denied

(8) Date of result (if you know): December 28th 2010

(b) If you filed any second petition, application, or motion, give the same information:

- (1) Name of court: Appellate division 3rd department  
 (2) Docket or case number (if you know): N/A  
 (3) Date of filing (if you know): N/A  
 (4) Nature of the proceeding: N.Y State Writ of habeas Corpus  
 (5) Grounds raised: Cumulative Error of Government Misconduct led to Petitioners Wrongful Conviction.

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

Yes ☐ No ☒

(7) Result: Pending

(8) Date of result (if you know): \_\_\_\_\_

(c) If you filed any third petition, application, or motion, give the same information:

(1) Name of court: \_\_\_\_\_

(2) Docket or case number (if you know): \_\_\_\_\_

(3) Date of filing (if you know): \_\_\_\_\_

(4) Nature of the proceeding: \_\_\_\_\_

(5) Grounds raised: \_\_\_\_\_

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(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

Yes ☐ No ☐

(7) Result: \_\_\_\_\_

(8) Date of result (if you know): \_\_\_\_\_

(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application, or motion?

(1) First petition: Yes ☐ No ☐

(2) Second petition: Yes ☐ No ☐

(3) Third petition: Yes ☐ No ☐

(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

GROUND ONE: Introduction of Rikers Island Visitor Log  
denied Petitioner his right to a Full and Fair Trial.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): \_\_\_\_\_

Trial Court erred, when over timely objection  
it allowed the People to introduce Petitioner's Rikers  
Island Visitor Log, AS Such Evidence was irrelevant  
OF NO Probative Value and unduly Prejudicial.

(b) If you did not exhaust your state remedies on Ground One, explain why: \_\_\_\_\_

(c) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☒ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: \_\_\_\_\_

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes ☐ No ☒

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): Exhibit "A"

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion or petition?

Yes ☐ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One: \_\_\_\_\_

**GROUND TWO:** Petitioner did not receive a full and fair determination of his Probable Cause for arrest claim on Direct Appeal.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): The Appellate division 2nd department used an Erroneous Procedure to Adjudicate Petitioners 4th amendment Probable Cause claim by Relying on double Hearsay Statements by the Citizen Informant and Relying on Evidence obtained after my Warrantless arrest.

(b) If you did not exhaust your state remedies on Ground Two, explain why: \_\_\_\_\_

(c) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☒ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: \_\_\_\_\_

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes ☒ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: N.Y. State Habeas Corpus

Name and location of the court where the motion or petition was filed: Appellate division  
3rd department.

Docket or case number (if you know): PENDING

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): Pending

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion or petition?

Yes ☐ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

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(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Two: \_\_\_\_\_

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**GROUND THREE:** Cumulative Error of government misconduct led to my wrongful conviction.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): The government, the N.Y.P.D. and the Case Prosecutor, used false testimony, false evidence, withheld exculpatory evidence from the grand jurors, violated Discovery Rules And Court orders which cumulatively led to my wrongful conviction.

(b) If you did not exhaust your state remedies on Ground Three, explain why: \_\_\_\_\_

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(c) **Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: Appellate Counsel Failed to.

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes ☒ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: N.Y. State Habeas Corpus.

Name and location of the court where the motion or petition was filed: Appellate division 3rd department.



Docket or case number (if you know): Pending

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion or petition?

Yes ☐ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(c) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three: \_\_\_\_\_

**GROUND FOUR:** Ineffective Assistance of Appellate Counsel.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): \_\_\_\_\_

Appellate Counsel Failed to Raise a meritorious argument that the Procedures the N.Y.P.D. used to obtain my identification was unduly Suggestive.  
(I-E: Lineup)

(b) If you did not exhaust your state remedies on Ground Four, explain why: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**(c) Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: Appellate Counsel  
Failed to.

**(d) Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes ☐ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

\_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): N/A

\_\_\_\_\_

\_\_\_\_\_

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion or petition?

Yes ☐ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: \_\_\_\_\_

\_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

\_\_\_\_\_

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

- (e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four: \_\_\_\_\_

13. Please answer these additional questions about the petition you are filing:

- (a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction? Yes ☐ No ☒

If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them: ground 4 Ineffective Assistance of Appellate

Counsel is still Pending for Leave to Appeal in the  
N.Y. State Court of Appeals - ground 3: IS still  
Pending in the Appellate division 3rd d.p.t.

- (b) Is there any ground in this petition that has not been presented in some state or federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: \_\_\_\_\_

14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinions or orders, if available. \_\_\_\_\_

15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging? Yes ☒ No ☐

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. ground 3 is still pending in the ny state court of Appeals for leave to Appeal. ground 4 is still pending in the Appellate Division 3rd d.p.t.

16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: Steven J Chaikin 186 Peekskill N.Y.

(b) At arraignment and plea: \_\_\_\_\_

(c) At trial: \_\_\_\_\_

(d) At sentencing: \_\_\_\_\_

(e) On appeal: William Kastin, Appellate Advocates, 2 Rector Street 10th floor - NY NY 10006.

(f) In any post-conviction proceeding: Petitioner Pro Se

(g) On appeal from any ruling against you in a post-conviction proceeding: ↓

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: \_\_\_\_\_

(b) Give the date the other sentence was imposed: \_\_\_\_\_

(c) Give the length of the other sentence: \_\_\_\_\_

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future? Yes ☐ No ☐

18. **TIMELINESS OF PETITION:** If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition.\*

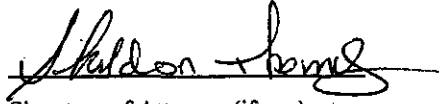
This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There is no text or other markings on the paper.

\* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2244(d) provides in part that:

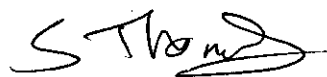
- (1) A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of —
- (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
  - (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;
  - (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
  - (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.
- (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

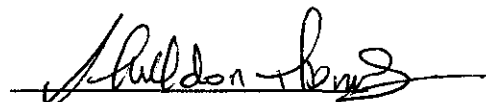
Therefore, petitioner asks that the Court grant the following relief: Grant an Evidentiary  
hearing concerning grounds 1-4.

or any other relief to which petitioner may be entitled.

  
Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this  
Petition for Writ of Habeas Corpus was placed in the prison mailing system on 3/2/2011  
\_\_\_\_ (month, date, year).

Executed (signed) on 3/2/2011 (date). 

  
Signature of Petitioner

If the person signing is not petitioner, state relationship to petitioner and explain why petitioner is not signing  
this petition. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_